



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

**FEB 23 2015**

Wendell Honanie  
Hopi Agency  
Bureau of Indian Affairs  
U.S. Department of the Interior  
PO Box 158  
Keams Canyon, AZ 86034

Via Certified Mail: 7013 1090 0000 1618 1253

Dear Mr. Honanie:

The purpose of this letter is to notify you of violations of the Clean Water Act (CWA) at the Keams Canyon Wastewater Lagoon facility. Enclosed is a Notice of Violation (NOV), issued consistent with Section 313 of the CWA, 33 U.S.C. § 1323, and Executive Order No. 12088, 43 Fed. Reg. 47707 (October 13, 1978). The violations included in the NOV are based on the Bureau of Indian Affairs' (BIA) report of unauthorized discharges, EPA's inspection of the facility, and records submitted by BIA.

The violations of the CWA include the following:

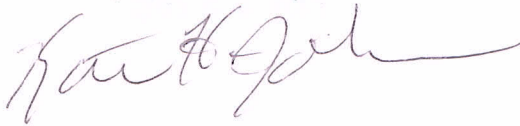
- Discharge without a National Pollutant Discharge Elimination System (NPDES) permit;
- Failure to submit discharge monitoring reports; and
- Failure to properly operate and maintain the treatment plant.

The nature of the violations at the Keams Canyon Wastewater Lagoon facility, and particularly recent problems with failure of the liner and berm at one of the lagoons, resulting in the breach of the lagoon, reveal that the BIA has been, and continues to be, in violation of the CWA.

E.O. 12088 requires the BIA to promptly consult EPA and provide a plan to achieve and maintain compliance with the CWA. Within twenty (20) calendar days of receipt of this NOV, please submit a written response describing the efforts that the BIA has or will make to correct the violations, including a detailed schedule for taking corrective actions. This response will provide a basis for a Federal Facility Compliance Agreement to be entered into between BIA and EPA.

If you have any questions, please contact Adam Howell of my staff at (415) 972-3584 or howell.adam@epa.gov or your attorney may contact Melanie Shepherdson in EPA Region IX's Office of Regional Counsel at (415) 972-3923 or shepherdson.melanie@epa.gov. Such informal conference does not relieve you of the obligation to respond in writing to this notice as set forth above.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Kathleen H. Johnson', with a long horizontal flourish extending to the right.

Kathleen H. Johnson  
Director, Enforcement Division

Enclosures: Notice of Violation

cc via email:

Melvin Todacheene, Facilities Manager, BIA Hopi Agency  
Herman G. Honanie, Chairman, Hopi Tribal Council  
Marilyn Fredericks, Chief of Staff for Hopi Tribal Council  
Gayl Shingoitewa-Honanie, Director, Hopi Environmental Protection Office  
Lionel Puhuyesva, Director, Hopi Water Resources Program  
John Graves, Project Manager, BIA Western Regional Office  
Bryan Bowker, Regional Director, BIA Western Regional Office

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX**

**IN THE MATTER OF:**

)  
)  
) Bureau of Indian Affairs,  
) Keams Canyon Wastewater Lagoon,  
) NPDES Permit No. AZ0022560  
)  
) Respondent  
)  
\_\_\_\_\_)

**NOTICE OF VIOLATION**

**STATUTORY AUTHORITY**

Section 313(a) of the Clean Water Act, 33 U.S.C. § 1323(a), provides, in relevant part, that:

- (a) Each department, agency or instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants, and each officer, agent, or employee thereof in the performance of his official duties, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner, and to the same extent as any nongovernmental entity including the payment of reasonable service charges. The preceding sentence shall apply (A) to any requirement whether substantive or procedural (including any record keeping or reporting requirement respecting permits and any other requirement, whatsoever), (B) to the exercise of any Federal, State, or local administrative authority, and (C) to any process and sanction, whether enforced in Federal, State, or local courts or in any other manner. This subsection shall apply notwithstanding any immunity of such agencies, officers, agents, or employees under any law or rule of the law.

Executive Order 12088, 43 Fed. Reg. 47707 (October 13, 1978), provides that each Executive agency must comply with the same substantive, procedural, and other requirements that would apply to a private person under the Clean Water Act.



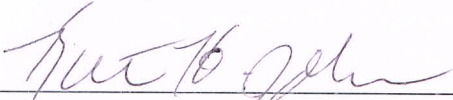
## **FINDINGS AND CONCLUSIONS**

1. The Hopi Agency, Bureau of Indian Affairs ("BIA") operates a domestic wastewater treatment facility known as Keams Canyon Wastewater Lagoon facility ("Facility"). The Facility is located in the community of Keams Canyon in Navajo County, Arizona.
2. The Facility conveys and treats domestic wastewater and discharges through an outfall to Keams Canyon Wash, which then flows to Polacca Wash and Corn Creek Wash, and then to the Little Colorado River.
3. EPA Region IX issued National Pollutant Discharge Elimination System ("NPDES") Permit No. AZ0022560 to the BIA on October 1, 2009. NPDES Permit No. AZ0022560 and the authorization to discharge expired on September 30, 2014.
4. Section H of NPDES Permit No. AZ0022560 incorporates the EPA Region IX Standard Conditions, updated July 3, 2002, including the duty to reapply for a permit 180 days before the expiration date of the permit.
5. The BIA failed to apply for renewal of NPDES Permit No. AZ0022560 before the permit expired on September 30, 2014.
6. Since October 1, 2014, the BIA has been discharging pollutants from the Facility without a valid NPDES permit in violation of the CWA.
7. Section E.1. of NPDES Permit No. AZ0022560 requires the BIA to submit, on a quarterly basis, monthly discharge monitoring reports ("DMRs"), to the EPA.
8. The BIA has failed to provide quarterly submittals of monthly DMRs to the EPA since January, 2011. The BIA failed to submit DMRs for each of the months from November, 2010, through September, 2014.
9. On January 22, 2015, BIA Hopi Agency staff discovered a breach in the northwest corner of the wall of the second treatment cell at the Facility, which caused partially treated wastewater to bypass disinfection.
10. On January 22 and 23, 2015, BIA staff attempted to compact the earthen berm through which the breach occurred and the surrounding ground in order to stem the flow of wastewater to Keams Canyon Wash and began draining cell 2 to below the level of a rip in the liner, discharging the wastewater from cell 2 to the Keams Canyon Wash.
11. On January 26, 2015, the Facility manager reported the berm breach and wastewater discharge to EPA by email.

12. After the breach, BIA staff configured the Facility to use bypass valving and piping to convey wastewater directly from cell 1 to the Facility outfall. Since January 22, 2015, the Facility has been bypassing some of the facility's designed treatment, discharging partially treated wastewater to the Keams Canyon Wash.
13. On February 3, 2015, a representative from the BIA Western Regional Office submitted to EPA, via email, a table of analytical results for samples that were taken during the period from April, 2013, to December, 2014. The results submitted show that effluent from the facility during that period exceeded effluent limits contained in the expired permit for the parameters BOD, pH, and TSS. These effluent limits ensure proper operation of the facility, and would be expected to be met. The table also indicates that effluent was not monitored for TRC, E. coli, or DO, which were required to be monitored under the expired permit.
14. On February 9, 2015, an EPA inspector conducted a Compliance Evaluation Inspection of the Facility and observed that:
  - a. There is not a qualified operator at the Facility. Staff who have responsibility for operating the Facility do not appear to have qualifications and training necessary to ensure adequate operation and maintenance of the Facility nor to ensure compliance with the NPDES permit.
  - b. No process control monitoring, testing, or measurement is being performed.
  - c. The Facility is not in full operation due to mechanical failures. In the primary lagoon, only one of two floating aerators is functioning. In cell 1, only one of four floating aerators is functioning.
  - d. There is evidence that vehicles have been driven along the top of the berm surrounding cell 2 which may have contributed to the liner failure. It appears the liner was installed by securing the liner over the constructed berm and anchored, and then soil was placed on the top of the berm over the liner. Along the top of the berm, soil was compacted below the tracks of vehicles, and rips and tears of the liner were visible poking through the soil layer underneath the tracks.

### CONCLUSION

Based on the foregoing, I have determined that the Bureau of Indian Affairs has violated and continues to violate Section 313 of the CWA, 33 U.S.C. § 1323. I have also determined that the BIA violated the terms of expired NPDES Permit No. AZ0022560 while it was still in effect, and violated the CWA by discharging to Keams Canyon Wash since October 1, 2014 without a NPDES permit.

  
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Kathleen H. Johnson  
Director, Enforcement Division

2/23/15  
\_\_\_\_\_  
Date